Supreme Court, U. S.
FILED
DEC 22 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-741

MIZOKAMI BROS. OF ARIZONA, INC., an Arizona corporation,

Petitioner,

v.

BAYCHEM CORPORATION, a New Jersey corporation; BAYER DE MEXICO, S.A., a corporation of the United States of Mexico; and BAYER AG, a corporation of the Federal Republic of Germany,

Respondents.

BRIEF OF BAYER DE MEXICO, S.A. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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December 21, 1977

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QUESTIONS PRESENTED

Bayer de Mexico asserts that there were only two questions fairly presented to the Court of Appeals as to which certiorari is now possible:

1. Did the Appellant establish sufficient facts upon which to base long-arm jurisdiction in Arizona over a Mexican corporation which did no business in Arizona and which is charged with causing nothing to occur in Arizona except a loss of profits to an Arizona corporation from business operations in Mexico?

2. Can there be circumstances which would justify a trial court in dismissing a complaint under the doctrine

of *forum non conveniens* when the complaint is brought by a U.S. corporation against a Mexican corporation arising out of business done by the U.S. corporation in Mexico?

STATEMENT OF THE CASE

The Petition for Certiorari is characterized by gross distortions of the record. Many assertions of fact are made which are totally unsupported by the record; other assertions are contradicted by the record. Before the Court of Appeals, these same charges were made, and found to be untrue by that court. In the Petition for Writ of Certiorari now filed, the distortions have become even more gross, to the point that at times the latest assertions are gainsaid even by the briefs filed below.

STATUS OF BAYER DE MEXICO, S.A.

Contrary to the assertion in the Petition, Bayer de Mexico is not a subsidiary of Bayer AG but, rather, is a subsidiary of Bayer Foreign Investments, Ltd., a Canadian corporation, with sole place of business in Toronto, Canada. Bayer Foreign Investments, Ltd., is a subsidiary of Bayer AG (141, 978). There is no evidence in this record that Bayer AG "centrally dominated [or] controlled . . . Bayer de Mexico" as asserted in the Petition (p. 5). References given simply do not support such an assertion. That Bayer de Mexico acted as separately as any subsidiary is established clearly in the record (141-43). The assertion that Baychem and Bayer de Mexico are ". . . the agents of each other" is without support. The only references given by the Petitioner for this wishful assertion are to the unverified Complaint.

The Agreement between Chemagro and Bayer de Mexico, found in the record at 1356-59, is totally unsupportive of the assertion that Bayer de Mexico was the "agent"

of Chemagro in the sale of Tamaron. There is absolutely no evidence in this record that Bayer de Mexico was selling Tamaron as an agent for anyone other than itself.

While it is true that Bayer de Mexico received "technical material" regarding the proper use of insecticides from both Bayer AG and Baychem, this certainly reflects the usual practice of any distributor of a trademark product. Likewise, there was a licensing agreement between Bayer de Mexico and Bayer AG by which Bayer de Mexico obtained the right to use the Bayer trademarks. An examination of this licensing agreement will indicate that it includes no more controls than would normally be imposed by any licensor (1326-28).

THE EVENTS WHICH OCCURRED IN ARIZONA

The Petitioner would have this Court believe that it advanced $1 million to finance the growing of vegetables "destined for importation into Arizona" and that the "[t]itle to the bell peppers vested at all times in Petitioner." The only reference to the establishment of the title of the bell peppers is to the unverified Complaint.

The actual record before the Court indicates that most of the advancements by Petitioner were to its Mexican subsidiary, Mizokami S.A. See Exhibit "A" to Petitioner's Answers to Interrogatories (1103-08). Petitioner has indicated that it bought all of the crops on the lands described in its complaint "through its Mexican subsidiary." Answer to Interrogatory 3(a) (1045). Petitioner failed in its answers to identify the officers, stockholders and directors of its subsidiary, Mizokami S.A. See Answer to Interrogatory 67 (1010).

Petitioner grossly exaggerates the role played by Arizona insofar as the projected exportation of these vegetables is concerned. In the first place, an unidentified but substantial portion of the vegetables financed by

Mizokami was consumed in Mexico. See Answers to Interrogatories 62 and 63 (1087-88). The unverified Complaint states that "approximately 90% of said garden vegetables are consumed in the United States and about 5% in Canada" (8). There is no establishment in the record that any substantial portion of these vegetables grown in Mexico will be consumed in the State of Arizona.

The Petitioner's statement would lead to the inference that the Respondents all knew that these vegetables could not be imported into the United States because of the residue of Tamaron. The record contains no such evidence. To the contrary, vegetables on which Tamaron had been used in prior years had been exported to the United States without incident prior to the March 1973 embargo (1251, 1091-94). Bayer de Mexico had no warning of the 1973 embargo (1031). There is no contention that the product sold, Tamaron, was itself either dangerous or harmful. Even Mizokami's own affidavits establish that Tamaron, as it was being used at this time in Mexico, was in no way harmful (1136). Tamaron was registered for use in Mexico (1022). It was first sold in Mexico in 1970 (1015). The label placed upon the chemical in Mexico indicated that it was "para uso en algodonero" (for use on cotton) (1022-23). During this time, official publications of the Mexican government recommended Tamaron generally for use on garden vegetables. See Bayer de Mexico's Exhibit to Interrogatory 92.

As to what vegetables were shipped for entry to the United States at Nogales, Arizona, it is patent that the Petitioner has overstated the record. There is no evidence in this record that "three individual trailers were unloaded from the train and were hauled by tractors through the international gate and across the border into Nogales, Arizona," as stated (Petition, p. 7). In the record (779, 1193), there is simply a reference to two "vans" bearing

identifications "PFT 110615" and "PFC 16046," and a "truck" with license "TU 8310, Sinaloa, Mexico." There is not even a showing that the F.D.A. took samples of these bell peppers in Arizona, nor is there any evidence that the F.D.A. "directed that Petitioner's bell peppers which had been imported into Arizona be destroyed, and they were destroyed" (Petition, p. 8). All references given to support these assertions are nonsupportive or are references to the unverified Complaint. The record itself contradicts these assertions. The two vans identified "PFT 110615" and "PFC 16046" actually ended up in Toronto, Canada (1181, 1182). The values stated for the totality of these two shipments in the Canadian customs records are $4,716 and $1,704 (*id.*). Only a portion of these two shipments was "voluntarily" disposed of in a "land fill" in Canada (1179-80).

Petitioner inaccurately asserts that the bell peppers destined for Canada were rejected by the Canadian authorities under a "reciprocity agreement with the U.S." (Petition, p. 8). The sole supportive reference is to Petitioner's own answers to interrogatories and those answers merely indicate that indeed Canada has its own statutes regulating the sale and use of insecticides and pesticides. None of the three Acts referenced details any reciprocal arrangements between the United States and Canada.*

As close as the record comes to establishing whether or not any vegetables financed by Petitioner were destroyed in Arizona is the news story provided by Petitioner in

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*CAN. REV. STAT., c.34, s.1 (1968-69) (Pesticide Residue Compensation Act); CAN. REV. STAT., c.38, s.1 (1952-53) (Food and Drugs Act); CAN. REV. STAT., c.50, s.1 (1968-69) (Pest Control Products Act).

its answers to interrogatories which quotes Abraham Klecks, Deputy Regional F.D.A. Director:

> " 'None [of the bell peppers] has been destroyed. All we need to do is turn them back at the border.'
>
> * * *
>
> HE [Klecks] SAID EPA officials have told the FDA the pestiticed [*sic*] levels detected pose no public health hazard, and no peppers have been seized in the United States." (Exhibit R to Plaintiffs' Answers to Interrogatories (1252)).

This same news story indicates that the embargo on green peppers covered the border from San Ysidro, California, to Brownsville, Texas, and that it was the result of "Monitor 4" residues on peppers. Bayer de Mexico does not have a monopoly on the sale of pesticides in Mexico. Monitor 4 is a Chevron product competitive to Tamaron. Compania Vamex de Los Mochis, alleged in the Petitioner's complaint to have sold Tamaron to the "growers" in Mexico, is an independent distributor which buys pesticide products from approximately fifteen manufacturers (1122).

Mizokami's answers to interrogatories establish beyond cavil that the vast majority of its claimed losses are by reason of unharvested vegetables which never left Mexico.*

*Mizokami's "Footnotes to Production Calculations" (1193) indicate the "[h]arvest was stopped March 17, 1973," and "again started on April 8, 1973." Exhibit O to Mizokami's Answers to Interrogatories (1193). In its Notes to Schedule 1 (1189), Mizokami identifies Schedule 1 as:

> "a recap of Mizokami Bros. of Arizona, Inc. invoices covering the expenses incurred, allowances made, crop losses, and any and all other expenses which occurred as a direct result of the use of Tamaron." (1189)

The total damage shown by Schedule 1 is $1,497,782.41 (1188). The major item included in this total is $1,346,505.24, which is referenced to Invoice #2531 (1228). An examination of this invoice indicates that it is supported by "Schedule 5", found at 1196-1206. Schedule 5 is a breakdown of estimated losses from the *178,094* wirebound cartons which were *not* harvested, as shown in Schedule 3 (1192).

DIFFICULTIES OF PROOF RECOMMEND A MEXICAN FORUM

Without bothering to establish the present residence of any of the witnesses mentioned, Mizokami asserts that the majority of the witnesses are available in Arizona. Again, Mizokami diverts from the record.

If this case goes to trial on the merits, Petitioner will be seeking to establish fraudulent misrepresentations as to the proper uses of Tamaron. The record is clear that all representations that were made were made in Mexico in the Spanish language.

Mizokami, in straining to show an Arizona nexus, asserts:

> "Petitioner purchased the Tamaron from Vamex, Bayer de Mexico's distributor, by checks drawn on an Arizona bank, for delivery in Mexico." (Petition, p. 7.)

There is absolutely no support for the assertion that any payments were made by checks drawn on an Arizona bank and the record is clear that all negotiations leading to the purchase of Tamaron by any of the "growers" referred to in Petitioner's complaint were in the Spanish language in the Los Mochis, Sinaloa, Mexico, area (over 550 miles from the forum).

If Petitioner is to recover for its losses, it must establish that Bayer de Mexico misrepresented its product.

These 178,094 cartons are a total of the 116,781 cartons "NOT HARVESTED ACCOUNT TAMARON" and 61,313 cartons "LOST ACCOUNT WORMS." Invoice #2531 (1228) shows a "credit" against estimated damages for *not* harvesting *178,094* cartons of bell peppers. The "credit" allowed is $2.811 per carton or a total credit of $500,622.23. Invoice 2531-1 (1229). There are similar credits for *not* harvesting 6,008 lugs of Japanese eggplants, "Credit Memo 2532-1" (1230); for *not* harvesting 1,260 lugs of "Eggplants (Round)," "Credit Memo 2533-1" (1231); and for *not* harvesting 14,219 wirebound cartons of Anaheim peppers, "Credit Memo 2530-1" (1228).

This would be the central issue of any trial on the merits and all witnesses in this regard are in Mexico, and most of them do not speak the English language. The varied difficulties encountered by the trial court in the interpretation of Spanish law and Spanish conversation would plague any trial in this country. An example of the type of misinterpretation that would be encountered is found at 1278, where the word "vendedor" is translated as "buyer."

There is no showing that the statute of limitations has run in Mexico. The only assertion made in the trial court as to a statute of limitations was that contained in the letter of opinion submitted by Mizokami of Licensiado Rosas, who referred only to Article 383 of the Code of Commerce, which was translated as:

> "C.C.Art. 383.—'The buyer who within five days after receiving the merchandise should not claim from the seller in writing the defects as to quality or quantity of the same, or which in thirty days, counted from the date that it receives the same should not present a claim due to hidden defects of the same, shall lose all action and right to file suit for said causes against the buyer.' [The last word undoubtedly refers to "seller."]" (1278).

The above quoted "statute of limitations" would clearly appear not to be a statute of limitations but to be a notice statute typically included in a commercial code pertaining to sales. If this statute is a defense to the subject action, then it is a defense in the United States also. *See Wojciuk* v. *United States Rubber Co.*, 19 Wis.2d 224, 122 N.W.2d 737 (1963). The most significant contact insofar as the sale of this insecticide is concerned is clearly in Mexico and would be governed by Mexican law. *Burr* v. *Renewal Guaranty Corp.*, 105 Ariz. 549, 468 P.2d 576 (1970); *Schwartz* v. *Schwartz*, 103 Ariz. 562, 447 P.2d 254 (1968); and *Ross* v. *Ross*, 96 Ariz. 249, 393 P.2d 933 (1964).

THE COURT OF APPEALS DID NOT MISCONSTRUE THE FACTS

The Petition makes the unsupported assertion that the Tamaron was paid for by checks drawn on an Arizona bank (Petition at 7, 11)—a fact which, even if true, is of limited significance in the context at hand.

The Petitioner then goes on to assert that the Court of Appeals erroneously stated "that Petitioner sustained losses 'when United States Customs Officers turned back a shipment of bell peppers at the Mexican border.'" If the Court of Appeals failed to include the F.D.A. in this statement, it is certainly understandable in view of the categorical statements made in the briefs filed by Petitioner in the Court of Appeals:

> "The 'event' which gave rise to Appellant's cause of action was the refusal of the United States Customs Officials to allow the bell peppers to cross the border and to remain in Arizona." Appellant's Reply Brief in the Ninth Circuit, p. 18; and, see also, p. 7 of the Opening Brief.

The Petitioner characterizes as "amazing" the statement that "the business done in Arizona by Baychem was unrelated to the claim." This is a simple statement of undisputed fact in this record.

REASONS FOR DENYING THE WRIT

I

THERE WAS NO JURISDICTION IN THE TRIAL COURT OVER BAYER DE MEXICO, BOTH BECAUSE, ACCORDING TO ARIZONA LAW, THERE WAS NO "EVENT" IN ARIZONA OUT OF WHICH THE CAUSE OF ACTION AROSE, AND THE IMPOSITION OF SUCH JURISDICTION WOULD NOT BE "FAIR PLAY."

A. There Was No Event in Arizona.

In order to obtain jurisdiction over Bayer de Mexico in Arizona through registered mail, in Mexico, as was attempted here, Bayer de Mexico must have "caused an event to occur in this state [Arizona] out of which the claim which is the subject of the complaint arose," Ariz. R. Civ. P. 4(e)(2), adopted by reference by Fed. R. Civ. P. 4(d)(7).

Mizokami has completely failed to show any event occurring in Arizona from which its claim for damages arose. To support its position, Mizokami offered various affidavits (R. Vargas Ruiz, 1121-1129; Fraga, 1130-1137; Kellett, 1158-1163). The gist of these affidavits is that Bayer de Mexico, through an agent, gave improper information (1) to one of the stockholders of Compania Vamex de Los Mochis, the independent distributor, (2) to a man (not an agent or employee of Mizokami) who farms land in Mexico, and (3) (through a hearsay affidavit of a Mexican official and a grower) to numerous farmers in Mexico. There is no showing in these affidavits of anything happening in Arizona.

What these affidavits conclusively establish is that Bayer de Mexico did business in Mexico with citizens of Mexico and that Mizokami did business in Mexico with Mexican citizens.

Arizona decisions under this rule have always recognized the limitation of the requirement of an "event" in Arizona.

In *Phillips* v. *Anchor Hocking Glass Corp.*, 100 Ariz. 251, 413 P.2d 732 (1966), a product manufactured by defendant was present in Arizona and caused an injury in Arizona. In *Powder Horn Nursery, Inc.* v. *Soil & Plant Laboratory, Inc.*, 20 Ariz. App. 517, 514 P.2d 270 (1973), a California corporation, not doing business in Arizona, had sporadic requests for services from Arizona customers. The service was soil tests. The Arizona plaintiff requested and received soil analyses from defendant. The Arizona plaintiff, relying on the analyses, suffered damage to nursery stock in Arizona. The Arizona Supreme Court stated:

> "*If* we find that the defendant corporation has caused an event to occur in Arizona, then the Arizona courts have jurisdiction unless we find that the maintenance of the suit in Arizona courts would offend the due process 'traditional notions of fair play and substantial justice'. International Shoe Co. v. Washington, supra."

20 Ariz. App. at 520, 514 P.2d at 273 (emphasis added).

In the recent case of *Houghton* v. *Piper Aircraft Corp.*, 112 Ariz. 365, 542 P.2d 24 (1975), the Arizona Supreme Court carefully drew a distinction between "event" and "effect."

In *Houghton,* residence of plaintiff in Arizona and the continuing effects of an accident which took place in California were found an insufficient basis for establishing *in personam* jurisdiction over nonresident corporate defendants. Houghton was flying his plane in California. The propeller apparently broke off and the plane crashed instantly killing plaintiffs' daughter and extensively injuring

both plaintiffs. Less than one month after the accident, plaintiffs moved to Arizona. Piper Aircraft, the manufacturer of the plane, and Sensenich, manufacturer of the propeller, were served under Ariz. R. Civ. P. 4(e)(2).

Plaintiffs in *Houghton, supra,* contended that the nonresident corporate defendants had caused an event to occur in Arizona out of which the complaint arose in that their pain and suffering, including emotional distress over the death of their daughter, continued after they became residents of Arizona.

The court found the facts did not support the claim of jurisdiction:

> "Both cases [prior Arizona decisions cited] arose out of fact situations where the actual damage causing *events* occurred in this state rather than merely the *effects* of those events."

112 Ariz. at 369, 542 P.2d at 28 (emphasis by the court).

In the fact situation in this action, the claim is made for the "effects" of alleged "events" which all took place in Mexico. Petitioner has totally failed to establish any *event* occurring in Arizona upon which its claim for damages can be grounded—

1. No product marketed by Bayer de Mexico is now, nor has ever been, used in or present in Arizona, as was the case in *Phillips* v. *Anchor Hocking Glass Corp., supra.*

2. There was never any contractual relationship between Petitioner and Bayer de Mexico in Arizona or, for that matter, in Mexico, as there was in *Powder Horn Nursery* v. *Soil & Plant Laboratory, supra.*

3. The only connection between Arizona and the claim is the residence of Mizokami, and Petitioner's unilateral acts, as in *Houghton* v. *Piper Aircraft Corp., supra.*

In the cases cited by Petitioner, one single recurring theme appears—there was an event caused by the defendant within the forum state upon which personal jurisdiction was based.

B. The Hauling of a Mexican Corporation Into an Arizona Court When that Corporation Has Done Nothing in the State of Arizona Would Violate Traditional Notions of Fair Play and Substantial Justice.

To assert jurisdiction on the facts established by Mizokami would extend state process far beyond any previous case—indeed, far beyond the limits of constitutional due process.

In *Hanson* v. *Denckla,* 357 U.S. 235 (1958), the Supreme Court set a clear outer limit on state jurisdiction over nonresidents:

> "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." *Id.* at 253.

This statement highlights the crucial difference between this case and reported cases in which nonresidents were held liable for acts done outside the forum state. *See, e.g.,* cases cited in Annots., 27 A.L.R.3d 397 (1969) and 19 A.L.R.3d 13 (1968).

In the instant case, "the requirement of contact with the forum state" can only be met by reference to *Mizokami's own* "unilateral activity." Bayer de Mexico did not come to Arizona, Mizokami's forum, nor did it deal in interstate commerce. *Rather, this case grows out of*

Mizokami's own economically agressive activities in going to Bayer de Mexico's home forum, dealing with Bayer de Mexico only through agents (the growers) who were themselves Mexican, and "invoking the benefits and protection of [the] laws" of Mexico. See Hanson v. *Denckla,* 357 U.S. at 253.

No court—in even the most expansive applications of long-arm jurisdiction—has ever based jurisdiction over a nonresident defendant on plaintiff's contacts with the residence of the defendant. *See Shaffer* v. *Heitner,* 97 S. Ct. 2569 (1977); *McGee* v. *International Life Insurance Co.,* 355 U.S. 220 (1957); and *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945).

Due process requires that jurisdiction be determined with reference to defendant's conduct which makes it fair to bring him to the plaintiff's forum, not vice versa. *See Taylor* v. *Portland Paramount Corp.,* 383 F.2d 634 (9th Cir. 1967). Yet, Mizokami here seeks to bring Bayer de Mexico, a Mexican corporation dealing only in Mexico with other Mexicans, into Federal court in Arizona because of dealings which Mizokami initiated through its own Mexican subsidiary acting only in Mexico. The logical extension of Mizokami's position compels the conclusion that a defendant can be sued wherever a plaintiff chooses.

II

THE DECISIONS BELOW AS TO *FORUM NON CONVENIENS* DO NOT VIOLATE BUT, RATHER, ARE IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

A. There Is No Authority for Holding That 28 U.S.C. § 1404(a) (1976) Withdraws from the District Court the Power to Dismiss a Case Under the Doctrine of *Forum Non Conveniens.*

Each and every case cited by the Petitioner wherein the court was held to have no power to dismiss involved fact

situations where a change of venue was appropriate. Certainly there is no intent expressed in the subject statute to deprive the district courts of this country of their inherent power to refuse jurisdiction of cases not within 28 U.S.C. § 1404(a) (1976)—cases which should have been brought in a foreign jurisdiction, rather than in the United States. *Vanity Fair Mills, Inc.* v. *T. Eaton Co.,* 234 F.2d 633 (2d Cir.), *cert. denied,* 352 U.S. 913 (1956). It would be a travesty on judicial administration if this Court were now to deprive its trial courts of this discretion. The district courts of this country are burdened enough with litigation without this escape valve being denied them.

There is no conflict among the circuits as to whether a district court has the power to dismiss a complaint on the ground of *forum non conveniens.* Petitioner cites cases in three circuits, the Second, Third and Eighth Circuits (Petition, p. 15), in an attempt to show that those circuits do not recognize the power to dismiss on the basis of *forum non conveniens.* In point of fact, however, both the Second Circuit, in *Vanity Fair Mills, Inc.* v. *T. Eaton Co., supra,* and the Eighth Circuit, in *J.F. Pritchard & Co.* v. *Dow Chemical of Canada Ltd.,* 462 F.2d 998 (8th Cir. 1972), have held that dismissals on that ground were proper. And in *Hoffman* v. *Goberman,* 420 F.2d 423 (3d Cir. 1970), the Third Circuit, presented with the argument that dismissal on the ground of *forum non conveniens* was improper unless there was a second forum available to the plaintiff in which he might obtain identical relief, found that it did not have to decide the question under the circumstances of that case. It has not subsequently ruled on the issue. Thus, all circuits which have ruled on this question are in agreement that a district court may dismiss a complaint on the ground of *forum non conveniens. See Paper Operations Consultants International, Ltd.* v. *SS Hong*

Kong Amber, 513 F.2d 667 (9th Cir. 1975) and *Prack* v. *Weissinger,* 276 F.2d 446 (4th Cir. 1969).*

B. There Was No Abuse of Discretion in Exercising the Doctrine in this Case.

The facts scream out that Mizokami does not want this action to be brought in Mexico. In its brief filed in the Court of Appeals it frankly admitted:

> "[O]ur research indicates the award [in Mexico], if any, would be nominal." Opening Brief, p. 70.

But if this is the law of Mexico, then it must be the law in this country, for this cause of action has all of its roots in this other country where Petitioner voluntarily entered into business. The bald assertion that Mexican law would give no relief may or may not be correct. The controverting affidavits of Licensiado Ricardo Rosas (166-168) and Licensiado Miguel Hernandez Romo (1274-1283) indicate that there is a forum in Mexico in which this complaint could be heard and relief afforded. Certainly the delay which the Petitioner has imposed upon itself by insisting on bringing this case in a forum which is completely foreign to the cause of action cannot now be used as a rationale to justify the bringing of the suit in the wrong forum in the first place.

The facts squarely place this action under the authority of *J. F. Pritchard & Co.* v. *Dow Chemical of Canada, Ltd.,* 462 F.2d 998 (8th Cir. 1972). In that action plaintiff was a United States corporation which had been assigned an amount due to its Canadian subsidiary from Dow Chemical of Canada, Ltd. The court found that, although this assign-

*Petitioner incorrectly characterizes the case of *Prack* v. *Weissinger* as one involving foreign nationals (Petition, p. 15). Appellee/defendant was, rather, a United States resident.

ment was legally sufficient to establish jurisdiction, jurisdiction was declined because Pritchard had "made its bed" in Canada:

> "After all, appellant chose to make its Canadian subsidiary the sole performing party to the contract; it is located in Canada; appellant performed the contract there; and Canadian law was chosen by appellant to apply to all interpretations of it. Thus there is more than a Canadian nexus here. The whole case is Canadian. Appellant made his bed in Canada; now he must lie in it if he wishes to proceed."

462 F.2d at 1002.

Mizokami equally has made its bed in the ejido* farmlands of Sinaloa, Mexico.

*"Ejidos" are the economically deprived to whom the Mexican government had assigned the lands upon which the crops financed by Mizokami S.A. were grown.

CONCLUSION

The distortion of the facts indulged in by the Petitioner indicates the desperateness of its position. The decision of the trial court, as affirmed by the United States Court of Appeals for the Ninth Circuit, is amply supported by the record below. The opinion properly interprets Arizona law on out-of-state service and properly recognizes an inherent power to dismiss for *forum non conveniens* in unusual circumstances. The Petition should be denied.

Respectfully submitted,

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December 21, 1977